



**THOMAS L. GARTHWAITE, M.D.**  
Director and Chief Medical Officer

COUNTY OF LOS ANGELES  
DEPARTMENT OF HEALTH SERVICES  
313 N. Figueroa, Los Angeles, CA 90012  
(213) 240-8101

**BOARD OF SUPERVISORS**

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First District

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Fifth District

November 17, 2005

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**AGREEMENT WITH BROADLANE, INC., FOR TEMPORARY CLINICAL STAFF  
CONTRACTING AND VENDOR MANAGEMENT SERVICES**  
(All Districts) (3 Votes)

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Approve and instruct the Director of Health Services, or his designee, to sign an Agreement for temporary clinical staff contracting and management services, substantially similar to Exhibit I, with Broadlane, Inc., for the provision of staffing and management services at Los Angeles County + University of Southern California Medical Center, effective upon date of Board approval through November 30, 2008, with a provision for three automatic one-year renewals, at no County cost;
2. Delegate authority to the Director of Health Services, or his designee, to amend Exhibit B to add other County health facilities to the Agreement, at his discretion.

**PURPOSE/JUSTIFICATION OF THE RECOMMENDED ACTION:**

Approval of the Agreement with Broadlane, Inc., (Broadlane) will potentially provide Los Angeles County + University of Southern California Medical Center (LAC+USC) with the ability to utilize Broadlane's Sourced Contracts to hire temporary clinical staff, primarily temporary nursing staff, at a reduced rate and to automatically manage utilization and payments of individual temporary clinical staff on a daily basis.

The services provided for in the Agreement will include the ability to request and manage temporary clinical staff through Broadlane's Web-based system, streamline the processing of temporary clinical staff, and potentially reduce temporary nursing staff costs.

This Agreement includes the provision to add other County health facilities and temporary clinical services at the Director's, or his designee's, discretion.

FISCAL IMPACT/FINANCING:

There is no cost to the County for services to be provided under this Agreement.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS:

For over two decades, the Department of Health Services (DHS) has utilized temporary nursing registries to assist in filling the gap between County nursing staff and County nursing need. The gap widened significantly with the passage of AB 394 in 1999 which mandated minimum nurse-to-patient staffing ratios for all California acute hospital services. Consequently, the demand and competition for nurses increased significantly and utilization of temporary nurses significantly grew, as did utilization of nursing registries for temporary services.

Nurse registries enroll nurses who are willing to work on a temporary per diem basis (8-hour/12-hour shifts) or as traveling nurses (13+ weeks). DHS currently has contracts with 32 nurse registries for temporary per diem and traveling nurses.

Nurse registry services are expensive both in actual cost and time spent monitoring utilization. For example, LAC+USC's nurse registry costs for FY 2004-05 were approximately \$36 million. Further, the actual ordering, monitoring, and invoice tracking of over 100 nurses per day is labor intensive and prone to error.

Broadlane is a company that has developed a two-part product that addresses both cost and management of nurse registry and other temporary clinical services. Broadlane reduces cost by negotiating nurse registry contracts at low rates and manages nurse registry services through a Web-based service - ProSource.

Reducing Cost

Based on a review of LAC+USC's nurse registry costs, Broadlane has estimated that they will reduce nurse registry costs at LAC+USC as a result of new, lower rate contracts with nurse registries. Further, Broadlane has represented that, since it is a volume discounter, Broadlane has the ability to potentially discount the County's nurse registry contract costs.

Broadlane will negotiate nurse registry contracts for the County and is authorized, through this Agreement, to act as an Agent of the County. These contracts will be between the nurse registry and the County and will contain the standard Board-mandated provisions. The contracts will require Board approval. Once executed, Broadlane will enter the contracted nurse registry information onto their Web-based program, ProSource. The nurse registry will pay Broadlane an administrative fee up to three percent of the County's use of the particular nurse registry services. There is no cost to the County.

For those nurse registries that have a current executed agreement with the County, Broadlane, acting as the County's agent, will give those registries an opportunity to enter into a new agreement with the County as negotiated by Broadlane.

#### Management

Broadlane's Web-based program, ProSource, has multiple functions. ProSource will streamline the nurse registry process by 1) reducing the number of calls necessary to order nurses, 2) track nurse registry hours/utilization through an on-site automated nurse check-in and check-out (time collection device), and 3) prepare invoices from the registry to the facility based on the automated information collected on-site and validated by the facility. ProSource will also prepare detailed financial and utilization reports. Information on ProSource can be accessed or modified by DHS staff to:

- Provide nurse resumes
- Track utilization
- Track nurse credentials and performance
- Validate time for invoicing

#### Other Services/Facilities

It is anticipated that LAC+USC may use this Agreement for additional temporary clinical services, including radiation therapy, cardiology, rehabilitation, respiratory, laboratory and pharmacy. Further, depending on the needs of the Department, it is anticipated that other DHS facilities will access this Agreement in the future.

The recommended Agreement with Broadlane will be effective upon date of Board approval and continue through November 30, 2008, with a provision for three automatic one-year renewals. The Agreement may be terminated for convenience by either party upon 30-days' advance written notice. Either party may terminate the Agreement for material breach after written notice and a 30-day cure period.

The recommended Agreement does not include the standard contract provisions mandated by the Board. Broadlane has required that the County utilize Broadlane's standard provisions, as they do with all contractors nationwide.

The aggregate fiscal liability under this Agreement for Broadlane is \$250,000, unless Broadlane acts with intentional misconduct or in violation of law, in which case there is no limit on liability.

Attachment A provides additional information.

County Counsel has reviewed and approved Exhibit I, as to use and form.

CONTRACTING PROCESS:

An open competitive selection process was not conducted because 1) this is a non-exclusive Agreement, i.e., other vendors may apply to the County for the same service arrangements, and 2) there is no net County cost for this Agreement.

Broadlane has the right of first refusal for negotiating new contracts for temporary clinical services that are not needed on an emergency basis and are not legally required to be solicited. The County must notify Broadlane in writing that it intends to contract for temporary clinical services and give Broadlane a contract completion deadline. Broadlane then has seven days to notify the County of its intent to act as the County's agent and negotiate the contract.

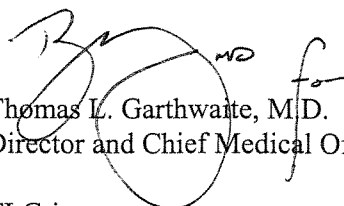
The Department will return to the Board with a standard form Agreement to be utilized by Broadlane in their negotiations.

IMPACT ON CURRENT SERVICES (OR PROJECT):

Board approval of the recommended Agreement will enhance the provision of nurse registry and other temporary clinical services at LAC+USC, as well as other DHS facilities, and ensure accurate reporting of such services to the Board.

When approved, this Department requires three signed copies of the Board's action.

Respectfully submitted,



Thomas L. Garthwaite, M.D.  
Director and Chief Medical Officer

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Attachments

c: Chief Administrative Officer  
County Counsel  
Executive Officer, Board of Supervisors

**SUMMARY OF AGREEMENT**

1. TYPE OF SERVICE/PROJECT:

Temporary Clinical Staff Contracting and Vendor Management Services

2. CONTRACTOR ADDRESS AND CONTACT PERSON:

Broadlane, Inc.  
40 Gold Street  
San Francisco, CA 94133  
(415) 844-7400

3. TERM:

Date of Board approval through November 30, 2008.

4. FINANCIAL INFORMATION:

There is no net County cost for this Agreement.

5. GEOGRAPHIC AREA TO BE SERVED:

All Districts

6. ACCOUNTABLE FOR MONITORING AND EVALUATION:

Pete Delgado, Administrator and Irene Recendez, Nursing Director at LAC+USC Medical Center.

7. APPROVALS:

LAC+USC Operations: Pete Delgado, CEO

Contract Administration: Irene Riley, Director

County Counsel (review): Elizabeth Friedman, Senior Deputy County Counsel

**BROADLANE TEMPORARY CLINICAL STAFF CONTRACTING  
AND VENDOR MANAGEMENT SERVICES AGREEMENT**

This Broadlane Temporary Clinical Staff Contracting and Vendor Management Services Agreement (the "**Agreement**") is made as \_\_\_\_\_ (the "**Effective Date**") between **Broadlane Inc.**, a Delaware corporation with offices at 13727 Noel Road, Suite 1400, Dallas, Texas 75240 ("**Broadlane**") and the **County of Los Angeles** ("**Company**"), on behalf of itself and the Facilities, as defined below.

**RECITALS:**

Broadlane provides temporary clinical staff contracting and vendor management services to assist its customers ("**Customers**") in managing their contract labor usage and costs, and providing appropriate clinical staff (excluding physicians) for their Facilities (defined below) in the following areas: nursing, radiology, radiation therapy, cardiology, rehabilitation, respiratory, laboratory and pharmacy. Broadlane's services include negotiating agreements with clinical staffing agencies ("**Sourced Contracts**") for the purchase of temporary, external clinical staff services to supplement the clinical staff employed by Customers ("**Contracting Services**"). In addition, Broadlane provides services to manage the Sourced Contracts on an ongoing basis ("**Vendor Management Services**"). Collectively, the Contracting Services and Vendor Management Services shall be referred to as the "**Services**."

Company and Company's Department of Health facilities listed on Exhibit B (collectively, the "**Facilities**") are health care providers and are not owned by, nor are any of them a subsidiary of, Broadlane.

Company desires to engage Broadlane to: (i) negotiate Sourced Contracts under which Company and Facilities may purchase temporary clinical staff services; and (ii) provide ongoing Vendor Management Services for the benefit of Company and Facilities.

Broadlane desires to: (i) negotiate Sourced Contracts under which Company and Facilities may purchase temporary clinical staff services; and (ii) provide ongoing Vendor Management Services for the benefit of Company and Facilities.

**In consideration of the recitals above and the mutual covenants set forth in this Agreement Broadlane and Company agree:**

**A. SERVICES.**

1. Contracting Services. Broadlane will make available to Company Sourced Contracts with appropriate temporary clinical staffing agencies. At Broadlane's discretion, the Sourced Contracts may include contracts currently in place for other Broadlane customers. Each Sourced Contract will cover Facilities within a geographic area mutually agreed upon by Broadlane and Company. Broadlane shall provide the following Contracting Services: (i) clearly understanding historical, current, and projected spending on a highly disaggregated basis (by unit, by specialty, by shift, and by contracted versus actual price paid currently) for Customers that will utilize the Sourced Contracts; (ii) developing more precise capacity management by specifying likely clinical staffing needs (by volume, time, location, and type) and leveraging this information during the negotiation process; (iii) aggregating volume across appropriate facilities (which may include, at Broadlane's discretion, facilities owned by other Customers) with the objective of maximizing savings; (iv) increasing the number of potential qualified bidders to create competition while consolidating volume with fewer agencies; (v) requiring highly disaggregated bids to isolate agency markups from clinical pay rates and to reveal true market price for agency services; (vi) conducting multiple rounds of negotiation with a large, qualified vendor set; and (vii) delivering competitively priced Sourced Contracts with appropriate service levels. Company will have the right to execute any Sourced Contracts utilized by Company pursuant to the terms of this Agreement.

2. Vendor Management Services. Broadlane will provide Company with staffing and reporting tools to manage and monitor temporary clinical agency usage and spending through the Sourced Contracts. Broadlane shall provide the following Vendor Management Services: (i) managing relationships with Sourced Contract vendors and monitoring their adherence to contract pricing and service levels, including evaluating vendors based on their delivering clinical staff according to negotiated contract terms; (ii) requiring Sourced

Contract vendors to provide rigorous and timely reporting of critical procurement metrics; (iii) managing relationships with Facilities to ensure that hospital staff are informed of the Sourced Contracts and ordering procedures; (iv) providing tools, processes and training to assist Facilities in their day-to-day ordering of Sourced Contract clinical staff; (v) reporting Sourced Contract compliance and other utilization metrics to Facilities at the individual, regional and divisional level; (vi) reporting evaluation of performance to Sourced Contract vendors; (vii) renegotiating Sourced Contracts as needed; and (viii) managing Sourced Contracts to ensure that they reflect up-to-date information on eligibility and any other pertinent information.

To assist in various aspects of contract labor ordering through Sourced Contracts, fulfillment of Sourced Contracts, and compliance, Broadlane will employ technology tools that increase clinical staffing procurement visibility (the "**Technology Tools**"). Specifically, Broadlane will provide Company with a limited license to a proprietary web-based vendor management solution which enables hospitals to actively manage the ordering, fulfillment, and compliance of contract labor in addition to tracking the credentials and performance of supplemental staff. Company acknowledges that it may not use the Technology Tools in connection with the use or purchase of any goods or services that are not accessed through Sourced Contracts. As part of the Technology Tools, Company will have access to certain nurse licensure information. Company acknowledges that such information is provided to Company directly by clinical staffing agencies and Broadlane is not responsible for confirming the accuracy of such information nor will Broadlane have any liability for the inaccuracy of such information.

3. Broadlane Resources. Broadlane will provide a core account management team to perform the Services under this Agreement (the "**Resources**"). In the event that the Resources are on-site at any Company location, Company shall make available to the Resources, at no cost to Broadlane, reasonable office space, office supplies, and office equipment, including, without limitation, reasonable use of the telephones for local and long distance calls.

4. Provision of Information by Broadlane. Broadlane shall provide Company with original Sourced Contracts available to Company under this Agreement and any amendments to or expirations or terminations of those Sourced Contracts.

5. Provision of Information by Company. Company shall provide to Broadlane, on a monthly basis, accounts payable data detailing Company's purchases of clinical staffing services.

## **B. TERM.**

Unless terminated earlier under the terms of this Agreement, the initial term of this Agreement ("**Initial Term**") shall be 3 years commencing on the Effective Date, and there shall be up to 3 renewal terms of 1 year each ("**Renewal Term(s)**"). If neither party gives written notice to the other party at least 90 days before the expiration date of the then current Initial Term or Renewal Term ("**Renewal Notice Date**"), this Agreement shall renew automatically for a Renewal Term.

## **C. TERMINATION.**

1. Breach. In the event of a material breach of this Agreement, the non-breaching party shall notify the breaching party in writing of the specific nature of the breach and shall request that it be cured. If the breaching party does not cure within 30 days of receiving such notice, the non-breaching party may immediately terminate this Agreement, or any Facility Agreement (defined below) under this Agreement, upon written notice to the breaching party. The parties agree that the breach of Paragraphs E, G, J, K, L, M(2), (4), (7), (11) and (16) shall constitute a material breach of this Agreement. Termination for breach shall not preclude the non-breaching party from pursuing any and all remedies available to it at law or equity.

2. Termination for Convenience. Either party may terminate this Agreement at any time by providing the other party with at least 30 days prior written notice.

3. Effect of Termination. Upon termination of this Agreement, Broadlane shall have no further obligations and Company shall have no further rights under this Agreement, except as otherwise expressly stated in this Agreement or with respect to rights acquired prior to the termination of this Agreement. If any Broadlane Supplier (defined below) permits Company to purchase under a Sourced Contract after termination

of this Agreement, then Broadlane shall continue to be Company's contracting services agent solely as to those purchases and each provision of this Agreement that expressly states that it shall survive the termination of this Agreement shall be effective as to those purchases; provided, however, that nothing in this Agreement will prevent Company from utilizing contracts other than Sourced Contracts to obtain goods and services from any supplier (including a Broadlane Supplier) after the termination of this Agreement.

**D. FEES AND EXPENSES PAYABLE TO BROADLANE.**

1. Services Fee. Each Broadlane Supplier will be required to pay an administrative fee to Broadlane of 3% or less on all purchases by Company or Facilities through Sourced Contracts. As Broadlane's sole compensation for the Services, Broadlane will be entitled to retain any administrative fee received from a supplier. Company shall not be required to pay any fee to Broadlane as compensation for the Services.

**E. ADMINISTRATIVE FEES; DISCOUNTS; REBATES.**

1. Disclosure and Reporting of Administrative Fees. Broadlane discloses to Customers in writing at least annually, and to the Secretary of Health and Human Services upon request, the amount of administrative fees received from each Broadlane Supplier with respect to purchases made by or on behalf of Customers in accordance with the regulations applicable to group purchasing organizations. See 42 C.F.R. § 1001.952(j). Broadlane shall send to Company the administrative fee disclosure data for Facilities. Company shall segregate administrative fee data applicable to the separate Facilities and forward that data to the respective Facilities with any notices sent to Company for the benefit of Facilities. The provisions of this clause shall survive termination of this Agreement.

2. Discounts. Company and Facilities shall disclose the amount of all discounts (including, but not limited to, price reductions, rebates, and receipt of free items) as required by applicable Medicare law and regulations. A copy of the Discount Safe Harbor to the Anti-Kickback Statute (the "**Discount Safe Harbor**") is attached to this Agreement as Exhibit A, and incorporated by reference, to provide Company and Facilities notice of their reporting obligations. 42 C.F.R. § 1001.952(h). The provisions of this clause shall survive termination of this Agreement.

3. Other Rebates. Broadlane may collect certain rebates earned on Company's and Facilities' purchases under Sourced Contracts and, within a reasonable time following receipt of the rebates, forward them to Company with the information (from Broadlane Suppliers) necessary to properly allocate the rebates according to purchases of Facilities and account for the rebates pursuant to Medicare law and regulation. See 42 C.F.R. § 1001.952(h).

Company shall apportion and distribute any rebates that Company receives from Broadlane among Company and Facilities according to Company's and Facilities' purchases made under Sourced Contracts. Company shall include with all rebate distributions any notices sent to Company for the benefit of Facilities.

**F. CUSTOMER RELATIONSHIP.**

1. Acceptance. Broadlane accepts Company and Facilities as Customers.
2. Facilities. All Facilities are listed on Exhibit B. The parties may add Facilities located within the United States as Customers upon mutual agreement of the parties in writing.

**G. DESIGNATION OF BROADLANE AS CONTRACTING SERVICES AGENT.**

1. Designation as Agent. Company and Facilities designate Broadlane as a contracting services agent to: (i) negotiate agreements with clinical staffing agencies under which Company and Facilities may purchase temporary clinical staffing services; (ii) provide ongoing Vendor Management Services for the benefit of Company and Facilities; and (iii) collect certain administrative fees and rebates from contracted suppliers ("**Broadlane Suppliers**"). During the term of this Agreement, Company and Facilities shall not independently (or with the assistance of a contracting services agent other than Broadlane) utilize any Broadlane Supplier for services currently accessible through Sourced Contracts without the prior written consent of Broadlane.



2. Letter of Authorization. Company will execute a Letter of Authorization, in substantially the form attached as Exhibit C, which may be provided to Broadlane Suppliers as evidence of Broadlane's authority to represent Company and Facilities in purchasing matters.

#### **H. SOURCED CONTRACTS.**

1. Title; Payment; Compliance. As a contracting services agent for Customers, Broadlane is acting as a negotiator and consultant and will neither take title to, nor be obligated to pay for, any services ordered or received by Customers.

All purchasing by Company and Facilities under Sourced Contracts shall be in the name of Company and Facilities. Company and Facilities (and not Broadlane) are solely responsible for compliance with applicable Sourced Contract terms and conditions, including, but not limited to, payment to the respective Broadlane Suppliers of amounts due for purchased services and different pricing levels. The provisions of this clause shall survive termination of this Agreement.

2. Beneficiaries; Liability; Release. Company understands that it and Facilities will be bound by any Sourced Contracts to which it is a party, which provide terms and conditions that apply to the individual contracts to purchase temporary clinical staff services between the Broadlane Suppliers and the Customers. Company and Facilities shall look solely to the particular Broadlane Supplier and not to Broadlane for any issue relating to the services or the purchase contract including, but not limited to, payment disputes and refunds. Nothing in this Agreement shall create any liability on the part of Broadlane for the services furnished by a Broadlane Supplier under a Sourced Contract.

3. Remedies for Breach. Company and Facilities understand that each Broadlane Supplier has the right to seek a remedy for breach (including nonpayment of amounts due and owing) directly against Company and Facilities. The remedy for breach may include termination of access to discounted pricing or termination of Company and Facilities from the list of Customers entitled to access the respective Sourced Contract. The provisions of this clause shall survive termination of this Agreement.

#### **I. BROADLANE DISCLAIMERS.**

1. No Warranty. **BROADLANE DOES NOT MAKE ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO SERVICES PURCHASED UNDER SOURCED CONTRACTS.**

2. Liability Limit. **IN NO EVENT WILL BROADLANE HAVE ANY LIABILITY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING IN ANY WAY OUT OF THIS AGREEMENT, WHETHER OR NOT BROADLANE HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. EXCEPT IN THE EVENT OF INTENTIONAL MISCONDUCT OR VIOLATION OF LAW, IN NO EVENT WILL BROADLANE'S AGGREGATE LIABILITY ARISING UNDER THIS AGREEMENT EXCEED \$250,000.00.**

3. No Liability. **IN NO EVENT WILL BROADLANE HAVE ANY LIABILITY IN CONNECTION WITH COMPANY'S OR FACILITIES' DECISION TO TERMINATE OR CURTAIL PURCHASES UNDER ANY AGREEMENTS OR PURCHASING ARRANGEMENTS THAT MAY FROM TIME TO TIME EXIST BETWEEN COMPANY OR FACILITIES ON THE ONE HAND AND SUPPLIERS ON THE OTHER. THIS APPLIES WHETHER THE AGREEMENT OR PURCHASING ARRANGEMENT IS EITHER (I) DIRECTLY BETWEEN THE SUPPLIER AND COMPANY OR FACILITIES, (II) THROUGH A PURCHASING AGENT OR GROUP PURCHASING ORGANIZATION, OR (III) THROUGH A SOURCED CONTRACT.**

#### **J. INDEMNIFICATION.**

1. Indemnification by Company. Company (on behalf of itself and the Facilities) shall indemnify, defend, and hold harmless Broadlane and any directors, officers, managers, employees, partners, affiliates, or agents (collectively, "**Affiliates**") of Broadlane from and against any and all losses, expenses, damages,

liabilities, costs (including, without limitation, reasonable attorneys' fees), and judgments ("**Liabilities**") brought against Broadlane in connection with any third party claims, demands, and actions arising out of or related to: (i) Company's material breach of this Agreement; (ii) Company's violation of any law or regulation applicable to its performance under this Agreement; (iii) Company's conduct in negotiating agreements; (iv) Company's purchasing under Sourced Contracts; (v) Company's using services purchased under Sourced Contracts; (vi) Company's failure to properly apportion and distribute rebates; (vii) Company or Facilities' failure to properly report discounts as required by applicable law and regulations; (viii) Company's failure to comply with the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), including but not limited to, obtaining and enforcing privacy agreements with "Business Associates" as that term is defined in HIPAA; (ix) Company's failure to properly communicate to Facilities administrative fee disclosures received from Broadlane; or (x) any termination, alteration or breach by Company or Facilities of any agreement or relationship with any third party (including, but not limited to, any termination, alteration or breach of any purchasing arrangement or agreement between Company or Facilities on the one hand and a supplier on the other, whether the agreement or purchasing arrangement is (a) directly between the supplier and Company or Facilities; (b) through a purchasing agent or group purchasing organization; (c) or through a Sourced Contract) and irrespective of whether the termination, alteration, or breach occurred or is alleged to have occurred as a result of any act of interference by Broadlane. This indemnity does not extend to any portion of the loss due to Broadlane's or its Affiliates negligence, gross negligence or willful misconduct. The provisions of this clause shall survive termination of this Agreement.

2. **Indemnification by Broadlane.** Broadlane shall indemnify, defend, and hold harmless Company and its Affiliates from and against any and all Liabilities brought against Company in connection with any third party claims, demands and actions arising out of or related to: (i) Broadlane's material breach of this Agreement; (ii) Broadlane's violation of any law or regulation applicable to its performance under this Agreement; (iii) Broadlane's conduct in negotiating agreements; (iv) Broadlane's failure to properly apportion and distribute rebates; (v) Broadlane's failure to comply with HIPAA; (vi) any breach by Broadlane of any agreement or relationship with any third party that is not directly or indirectly caused by Company or Facilities; or (vii) Broadlane's failure to properly report discounts as required by applicable law and regulations. This indemnity does not extend to any portion of the loss due to Company's or its Affiliates negligence, gross negligence or willful misconduct. The provisions of this clause shall survive termination of this Agreement.

#### **K. RESTRICTIVE COVENANTS; REPRESENTATIONS.**

1. **Confidentiality.** Subject to applicable law (including without limitation, the California Public Records Act), Company and Facilities shall keep strictly confidential all information disclosed by Broadlane and/or Broadlane Suppliers, including, but not limited to, Sourced Contracts, Broadlane pricing, Broadlane Supplier quotes, and purchasing systems of Broadlane and Broadlane Suppliers. Company and Facilities shall return any confidential information to Broadlane or Broadlane Suppliers upon request. The provisions of this clause shall survive termination of this Agreement.

2. **Non-Solicitation.** For the term of this Agreement and 1 year after the expiration or termination of the term of this Agreement, Company and Facilities will not directly or indirectly employ, cause to be employed, or solicit for employment (or utilize as an independent contractor) any of Broadlane's employees, or any former employee, agent or subcontractor of Broadlane, who has been engaged in providing Services under this Agreement.

3. **Representation and Warranty.** The execution, delivery, and performance of this Agreement by Company and Facilities (i) will not violate any statute, law, rule, or regulation of any governmental authority to which Company or the Facilities may be subject; (ii) has been duly authorized by Company and Facilities; (iii) is not prohibited by, will not result in a breach of, and will not otherwise conflict with any other contract, agreement or arrangement to which Company is a party; and (iv) will at all times be performed in compliance with all applicable federal, state, county and other laws and regulations, and in such a manner as not to cause Broadlane to be in violation of any applicable federal, state, county or other laws or regulations.

#### **L. INTELLECTUAL PROPERTY.**

1. **Broadlane Properties.** In the course of Broadlane's performance of the Services hereunder, Broadlane may use or develop tools, products, algorithms, know-how, ideas, techniques, materials,

methodologies, or concepts that have general applicability outside of the Services ("**Broadlane Properties**"). Company agrees that Broadlane retains all right, title, and interest in and to the Broadlane Properties. Broadlane grants to the Company a royalty-free and non-exclusive license to use the Broadlane Properties that are incorporated into the Services and any deliverables related to those Broadlane Properties, only to the extent necessary for the Facilities to use the Services or deliverables for its own internal business purposes. Company shall not sell, transfer, lease, or otherwise commercially exploit the Broadlane Properties.

2. Work Product. Company shall retain all right, title, and ownership in and to all Work Product (defined below) including, without limitation, all copyright, patent, trade secret, and other intellectual property rights in the Work Product. The Work Product shall be considered "works made for hire," as such term is used in the United States Copyright Act of 1976 (as amended). "**Work Product**" shall mean flow charts, documentation, reports, and all other materials prepared by Broadlane and delivered by Broadlane to Company as part of the Services, excluding any Broadlane Properties and any Broadlane confidential information embedded in the Work Product.

3. Third Party Technology. Broadlane may employ certain technology tools in providing the Services hereunder including, without limitation, software and other tools provided by Broadlane's subcontractors and other third parties. In the event that Broadlane sublicenses or otherwise makes available any such software or other tools to Company or the Facilities in order to perform the Services hereunder, Company shall not, directly or indirectly: (i) reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from such software or tools; or (ii) sell, lease, distribute, assign, sublicense, or otherwise transfer its rights to use the software or tools to any third party.

#### **M. MISCELLANEOUS.**

1. Aggregate Data. Company and Facilities consent to Broadlane's use, sale, transfer, and transmission of aggregate data regarding Company and Facilities obtained by Broadlane under this Agreement, including demographic information, purchasing volumes, commitment rates, purchasing patterns, dollar volume of purchases, and items purchased; provided however, that the information may not identify Company or Facilities, nor any other hospital-specific information (e.g., address, HIN number, Medicare provider number, etc.) that may be used by a third party to identify Company or Facilities. Furthermore, Company and Facilities consent to Broadlane's use and transmission of all identifiable information regarding Company and Facilities, as necessary for Broadlane to perform its obligations set forth in this Agreement and for its own internal business purposes.

2. Right of First Opportunity. Except as set forth below, in the event that Company desires to enter into a new agreement directly with a vendor to purchase temporary clinical staffing services for the Facilities that does not legally require a public solicitation, Broadlane shall have a right of first opportunity to negotiate a Sourced Contract tailored to meet the needs of Company as follows: (i) Company shall communicate to Broadlane in writing its contract criteria (the "**Business Criteria**") for the Sourced Contract, which criteria may include a reasonable time period within which Broadlane must complete the Sourced Contract (a "**Contract Deadline**"); (ii) Broadlane shall have 7 business days after receiving such communication (the "**First Opportunity Period**") to provide notice to Company of its intent to negotiate a Sourced Contract that satisfies the Business Criteria; (iii) in the event that Broadlane does not provide such notice within the First Opportunity Period or does not complete the Sourced Contract by the Contract Deadline, then Company may directly enter into a contract for the Business Criteria with a vendor of the Company's selection; and (iv) in the event Broadlane provides such notice within the First Opportunity Period, Broadlane will use commercially reasonable efforts to negotiate and enter into the Sourced Contract in accordance with Company's Business Criteria. Notwithstanding the foregoing, if Company or a Facility encounters a situation that requires it to obtain temporary clinical staffing services on an emergency basis, then Company shall have the right to enter into a new agreement directly with a vendor to purchase temporary clinical staffing services for the Company or the Facility without complying with this Section.

3. Other Engagements. Broadlane may provide materials and Services similar to those provided under this Agreement to third parties unrelated to Company.

4. Assumptions. Any Broadlane work plans, proposals, estimated completion times and projected results are dependent, in part, on the provision by Company of timely access to the information and

resources required to perform the Services hereunder. To the degree that there are material delays in the availability of such information and resources, Broadlane's ability to meet its estimates and projections will be affected. Company acknowledges that its obligation to provide information and resources is necessary to the satisfactory conduct and completion of the engagement.

5. Independent Contractors. The parties' relationship under this Agreement is that of independent contractors. This Agreement does not create any employment, agency, franchise, joint venture, partnership, or other similar legal relationship between Broadlane and Company. Neither party has the authority to bind or act on behalf of the other party except as otherwise specifically stated in this Agreement.

6. Company's Responsibilities. Company acknowledges that Broadlane is providing Services hereunder in its capacity as consultants to Company and that the Services do not purport to identify all steps or approaches necessary for Company to improve its operational or financial performance or to accomplish any particular business goal, and Broadlane provides no assurance as to the extent to which a potential benefit, whether or not identified in this Agreement, will be achieved. In addition, Company acknowledges that Broadlane, in its capacity as consultants, is not authorized to make decisions on behalf of Company and the Facilities. Company shall be solely responsible for reviewing all Sourced Contracts prior to entering into such contracts and for ensuring that the terms of such contracts are in compliance with all applicable laws, including, without limitation, those related to taxes, labor and employment, and vicarious liability.

7. Assignment. Neither party may assign or transfer this Agreement or any of the rights or obligations under this Agreement (including assignments by operation of law such as mergers and consolidations) without the other party's prior written consent. However, Broadlane may assign this Agreement or any interest it has in this Agreement to a wholly owned subsidiary.

8. Notices. Any notice under this Agreement shall be in writing and shall be deemed to have been given on the earlier of (i) the date on which it is delivered personally or (ii) 4 days after it is deposited in the U.S. mail, postage prepaid, certified with return receipt requested. Notices must be addressed to Broadlane or Company at the address set forth below (or at such other address as may have been designated by the party pursuant to this Paragraph).

If to Broadlane: Broadlane, Inc.  
Attn: Labor Services Department  
13727 Noel Road  
Suite 75240  
Dallas, Texas 75240

If to Company: Department of Health Services  
Attn: Contracts and Grants Division  
313 North Figueroa Street  
Sixth Floor East  
Los Angeles, CA 90012  
Attn: Division Chief

and to: LAC+USC Healthcare Network  
1200 North State Street  
Los Angeles, CA 90033  
Attn: Administrator

9. Applicable Law. This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the state of California, without regard to its choice of law provisions. The provisions of this clause shall survive termination of this Agreement.

10. Access to Books and Records of Broadlane by Secretary of HHS or Authorized Representative. Upon written request of the Secretary of Health and Human Services or the Comptroller General or any of their duly authorized representatives, Broadlane or any other related organization providing services with a value or cost of \$10,000.00 or more over a 12-month period, shall make available to the Secretary the contracts, books, documents, and records that are necessary to certify the nature and extent of the costs of providing the services. Inspection shall be available up to 4 years after the rendering of the services. This Paragraph is not intended to prohibit or impede any state audits pursuant to state law. The provisions of this clause shall survive termination of this Agreement.

11. Modification. No modification of this Agreement will be effective unless in writing and signed by each of the parties. The waiver of any breach of any term or condition of this Agreement does not waive any other breach of that term or condition or any other term or condition unless agreed to in a writing signed by both parties.

12. Expenses. Each party will bear its own expenses associated with the negotiation and execution of this Agreement.

13. No Waiver. Each party agrees that no failure or delay by the other party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

14. No Third Party Beneficiaries. No person or entity is intended or shall be deemed or determined to be a third party beneficiary of this engagement.

15. Severability. If any part of this Agreement (or its applicability to a particular Facility) shall be determined to be invalid, illegal, or unenforceable by any valid Act of Congress or act of any legislature or by any regulation duly promulgated by the United States or a state acting in accordance with the law, or declared null and void by any court of competent jurisdiction, then such part shall be reformed, if possible, to conform to the law and, in any event, the remaining parts of this Agreement shall be fully effective and operative insofar as reasonably possible.

16. Changes in Law.

a. Legal Event; Consequences: Notwithstanding any other provision of this Agreement, if any federal, state, or local governmental agency, or any court or administrative tribunal passes, issues, or promulgates any law, rule, regulation, standard, interpretation, order, decision, or judgment, including, but not limited to, those relating to any regulation pursuant to state or federal anti-kickback or self-referral statutes (collectively or individually, "**Legal Event**"), which, in Broadlane's good faith judgment, (i) materially and adversely affects Broadlane's ability to provide the services or collect the fees hereunder; or (ii) subjects Broadlane to a risk of prosecution or civil monetary penalty, then Broadlane may give Company notice of intent to amend or terminate this Agreement in accordance with Subsection below entitled "Notice Requirements."

b. Notice Requirements: Broadlane shall give notice to Company together with an opinion of counsel stating: (i) the Legal Event(s) giving rise to the notice; (ii) the consequences of the Legal Event(s) as to Broadlane; (iii) Broadlane's intention to either terminate this Agreement due to an unacceptable risk of prosecution or civil monetary penalty or amend this Agreement, together with a statement setting forth the specific purpose of the amendment as it relates to the legal compliance issue or risk that Broadlane seeks to address; (iv) Broadlane's proposed amendment(s); and (v) Broadlane's request for commencement of the Renegotiation Period (as that term is defined below).

c. Renegotiation Period; Termination: In the event of notice under the Notice Requirements Subsection of this Section, which provides for an amendment of this Agreement, the parties shall have ten (10) days from the giving of the notice ("**Renegotiation Period**") within which to attempt to amend this Agreement in accordance with Broadlane's proposal (if any) or otherwise as the parties may agree. If this Agreement is not amended within the Renegotiation Period, this Agreement shall terminate as of midnight on the 10<sup>th</sup> day after notice was given. Except as otherwise required by applicable law, any amounts then-owing to either party shall be paid, on a pro rata basis, up to the date of termination, and any obligation

under this Agreement that is to continue beyond expiration or termination shall so continue pursuant to its terms. All opinions of counsel presented by Broadlane and any corresponding opinions given by the other party in response shall be deemed confidential information pursuant to the confidentiality provisions of this Agreement given solely for purposes of renegotiation and settlement of a potential dispute, and shall not be deemed disclosed so as to waive any privileges otherwise applicable to the opinions.

17. Entire Agreement. This Agreement, including all referenced Exhibits, constitutes the parties' entire agreement on this subject.

The individuals signing below represent and warrant that they are duly authorized and have the full power and authority to execute this Agreement on behalf of all the individuals or entities for whom they are signing and that this Agreement is binding on the individuals or entities on whose behalf they have signed.

**BROADLANE, INC.**

**COUNTY OF LOS ANGELES**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT A**

### **Notification of Obligations to Report Discounts (Attach 42 C.F.R. § 1001.952(h))**

#### **Discount Safe Harbor**

(h) Discounts. As used in section 1128B of the Act, "remuneration" does not include a discount, as defined in paragraph (h)(5) of this section, on an item or service for which payment may be made, in whole or in part, under Medicare or a State health care program for a buyer as long as the buyer complies with the applicable standards of paragraph (h)(1) of this section; a seller as long as the seller complies with the applicable standards of paragraph (h)(2) of this section; and an offer or of a discount who is not a seller under paragraph (h)(2) of this section so long as such offeror complies with the applicable standards of paragraph (h)(3) of this section:

(1) With respect to the following three categories of buyers, the buyer must comply with all of the applicable standards within one of the three following categories—

(i) If the buyer is an entity which is a health maintenance organization (HMO) or a competitive medical plan (CMP) acting in accordance with a risk contract under section 1876(g) or 1903(m) of the Act, or under another State health care program, it need not report the discount except as otherwise may be required under the risk contract.

(ii) If the buyer is an entity that reports its costs on a cost report required by the Department or a State health care program, it must comply with all of the following four standards—

(A) The discount must be earned based on purchases of that same good or service bought within a single fiscal year of the buyer;

(B) The buyer must claim the benefit of the discount in the fiscal year in which the discount is earned or the following year;

(C) The buyer must fully and accurately report the discount in the applicable cost report; and

(D) The buyer must provide, upon request by the Secretary or a State agency, information provided by the seller as specified in paragraph (h)(2)(ii) of this section, or information provided by the offeror as specified in paragraph (h)(3)(ii) of this section.

(iii) If the buyer is an individual or entity in whose name a claim or request for payment is submitted for the discounted item or service and payment may be made, in whole or in part, under Medicare or a State health care program (not including individuals or entities defined as buyers in paragraph (h)(1)(i) or (h)(1)(ii) of this section), the buyer must comply with both of the following standards—

(A) The discount must be made at the time of the sale of the good or service or the terms of the rebate must be fixed and disclosed in writing to the buyer at the time of the initial sale of the good or service; and

(B) The buyer (if submitting the claim) must provide, upon request by the Secretary or a State agency, information provided by the seller as specified in paragraph (h)(2)(iii)(B) of this section, or information provided by the offeror as specified in paragraph (h)(3)(iii)(A) of this section.

(2) The seller is an individual or entity that supplies an item or service for which payment may be made, in whole or in part, under Medicare or a State health care program to the buyer and who permits a discount to be taken off the buyer's purchase price. The seller must comply with all of the applicable standards within the following three categories—

(i) If the buyer is an entity, which is an HMO or a CMP acting in accordance with a risk contract under section 1876(g) or 1903(m) of the Act, or under another State health care program, the seller need not report the discount to the buyer for purposes of this provision.

(ii) If the buyer is an entity that reports its costs on a cost report required by the Department or a State agency, the seller must comply with either of the following two standards—

(A) Where a discount is required to be reported to Medicare or a State health care program under paragraph (h)(1) of this section, the seller must fully and accurately report such discount on the invoice, coupon or statement submitted to the buyer; inform the buyer in a manner that is reasonably calculated to give notice to the buyer of its obligations to report such discount and to provide information upon request under paragraph (h)(1) of this section; and refrain from doing anything that would impede the buyer from meeting its obligations under this paragraph; or

(B) Where the value of the discount is not known at the time of sale, the seller must fully and accurately report the existence of a discount program on the invoice, coupon or statement submitted to the buyer; inform the buyer in a manner reasonably calculated to give notice to the buyer of its obligations to report such discount and to provide information upon request under paragraph (h)(1) of this section; when the value of the discount becomes known, provide the buyer with documentation of the calculation of the discount identifying the specific goods or services

purchased to which the discount will be applied; and refrain from doing anything which would impede the buyer from meeting its obligations under this paragraph.

(iii) If the buyer is an individual or entity not included in paragraph (h)(2)(i) or (h)(2)(ii) of this section, the seller must comply with either of the following two standards—

(A) Where the seller submits a claim or request for payment on behalf of the buyer and the item or service is separately claimed, the seller must provide, upon request by the Secretary or a State agency, information provided by the offer or as specified in paragraph (h)(3)(iii)(A) of this section; or

(B) Where the buyer submits a claim, the seller must fully and accurately report such discount on the invoice, coupon or statement submitted to the buyer; inform the buyer in a manner reasonably calculated to give notice to the buyer of its obligations to report such discount and to provide information upon request under paragraph (h)(1) of this section; and refrain from doing anything that would impede the buyer from meeting its obligations under this paragraph.

(3) The offeror of a discount is an individual or entity who is not a seller under paragraph (h)(2) of this section, but promotes the purchase of an item or service by a buyer under paragraph (h)(1) of this section at a reduced price for which payment may be made, in whole or in part, under Medicare or a State health care program. The offeror must comply with all of the applicable standards within the following three categories—

(i) If the buyer is an entity, which is an HMO or a CMP acting in accordance with a risk contract under section 1876(g) or 1903(m) of the Act, or under another State health care program, the offeror need not report the discount to the buyer for purposes of this provision.

(ii) If the buyer is an entity that reports its costs on a cost report required by the Department or a State agency, the offeror must comply with the following two standards—

(A) The offeror must inform the buyer in a manner reasonably calculated to give notice to the buyer of its obligations to report such a discount and to provide information upon request under paragraph (h)(1) of this section; and

(B) The offeror of the discount must refrain from doing anything that would impede the buyer's ability to meet its obligations under this paragraph.

(iii) If the buyer is an individual or entity in whose name a request for payment is submitted for the discounted item or service and payment may be made, in whole or in part, under Medicare or a State health care program (not including individuals or entities defined as buyers in paragraph (h)(1)(i) or (h)(1)(ii) of this section), the offeror must comply with the following two standards—

(A) The offeror must inform the individual or entity submitting the claim or request for payment in a manner reasonably calculated to give notice to the individual or entity of its obligations to report such a discount and to provide information upon request under paragraphs (h)(1) and (h)(2) of this section; and

(B) The offeror of the discount must refrain from doing anything that would impede the buyer's or seller's ability to meet its obligations under this paragraph.

(4) For purposes of this paragraph, a rebate is any discount the terms of which are fixed and disclosed in writing to the buyer at the time of the initial purchase to which the discount applies, but which is not given at the time of sale.

(5) For purposes of this paragraph, the term discount means a reduction in the amount a buyer (who buys either directly or through a wholesaler or a group purchasing organization) is charged for an item or service based on an arms-length transaction. The term discount does not include—

(i) Cash payment or cash equivalents (except that rebates as defined in paragraph (h)(4) of this section may be in the form of a check);

(ii) Supplying one good or service without charge or at a reduced charge to induce the purchase of a different good or service, unless the goods and services are reimbursed by the same Federal health care program using the same methodology and the reduced charge is fully disclosed to the Federal health care program and accurately reflected where appropriate, and as appropriate, to the reimbursement methodology;

(iii) A reduction in price applicable to one payer but not to Medicare or a State health care program;

(iv) A routine reduction or waiver of any coinsurance or deductible amount owed by a program beneficiary;

(v) Warranties;

(vi) Services provided in accordance with a personal or management services contract; or

(vii) Other remuneration, in cash or in kind, not explicitly described in paragraph (h)(5) of this section.



**EXHIBIT B**

**FACILITIES**

LAC+USC Healthcare Network  
1200 North State Street  
Los Angeles, CA 90033

**EXHIBIT C**

**LETTER OF AUTHORIZATION**

To all Broadlane Suppliers:

The County of Los Angeles ("**Company**") entered into a temporary clinical staff contracting and vendor management services agreement with Broadlane, Inc. ("**Broadlane**"), effective December 1, 2005, in which Company and Department of Health facilities ("**Facilities**") appointed Broadlane as a contracting services agent. This letter is to inform Broadlane Suppliers that Broadlane is one of Company's and Facilities' contracting services agent to negotiate contracts with temporary clinical staffing agencies.

As Company's and Facilities' contracting services agent, Broadlane is authorized to collect detailed information on Company's and Facilities' purchases made under agreements available through Broadlane's contracting services program.

**COUNTY OF LOS ANGELES**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_